IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION NO : 4124 of 2000

Between:

1) V.Soma Sundaram S/o Ramakrishna Rao, aged 36 years,

Occ: B.Ed. Assistant, R/o Bod Sakuruu village,

Allavaram Mandal, E.G.District.

2) P.M.Ramanadham S/o P.V.Krishna Rao, aged 33 years

Occ: Secondary Grade Teacher R/o Opp: SKBR college

Lane, Bhupaiah Agraharam, Amalapuram, E.G.District.

..... PETITIONERS

AND

1) Government of A.P rep. by its Secretary, Education Department,

Secretariat Buildings, Hyderabad.

2) Commissioner and Director of School Education, Andhra Pradesh,

Hyderabad.

3) Regional Joint Director of School Education, Kakinada, East Godavari

District.

4) District Educational Officer, East Godavari District, Kakinada.

5) Correspondent, S.V.S.M.Best Convent , English Medium High

School, Amalapuram, E.G.District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or orders or direction mainly in the nature of Writ of Mandamus or any other appropriate writ, by declaring that the G.O.Ms.No.92, Education Department, dated 3.12.1999 issued by the Respondent No.1 relating to the date from which it comes into effect as far as the petitioners herein is concerned is contrary to law, arbitrary, against the principles of natural justice, contrary to Article 14 of Constitution of India and direct the respondents to regularize the appointments of the petitioners from the date of their appointment and drop the proceedings of the recovery of salary and allowances already paid upto 1.5.1998 and direct the respondents to release the salary and allowances from 1.5.1998 onwards till date and pass such other order or orders as this Hon'ble Court deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: SMT.A.ANASUYA

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

The Court made the following :

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Heard Smt.A.Anasuya, learned counsel appearing on behalf of the petitioner and the learned Government Pleader for School Education.

2. The petitioners herein, who were working as B.Ed Assistants with respondent No.5, files this writ petition, *inter alia* seeking a writ of *Mandamus* to declare G.O.Ms.No.92, Education Department, dated 3.12.1999 issued by the first respondent to the extent of denial of salary and recovery thereof as bad, illegal and void.

3. The case of the petitioners is to the effect that on the clear vacancies caused in two posts of teachers, both the petitioners herein were appointed with effect from 28.6.1989 and 26.8.1989 respectively. It was stated that the petitioners are fully qualified and complied all other conditions, as contemplated under G.O.Ms.No.60, Education Department dated 28.1.1986 and therefore, they were rightly and duly appointed as Secondary Grade Assistants, after conducting interviews. Since then, the petitioners are discharging their duties to the utmost satisfaction with unblemished record. Thereafter, the first petitioner was also promoted as B.Ed Assistant with effect from 1.6.1991. In the meanwhile, since the school was running satisfactorily, respondent No.4 as per letter dated 17.2.1992 recommended for sanction of Grant-in-Aid, to the second respondent, who, in turn, recommended to the Government for admitting the institution to Grant-in-Aid. Accordingly, the Government sanctioned Grant-in-Aid under G.O.Ms.No.299, dated 1.9.1992 admitting the said institution, namely the 5th respondent, to Grant-in-aid along with 12 other schools in different districts. Thereafter, respondent No.4 has also approved the appointments of the petitioners made in unaided posts and the promotion from Second Grade to B.Ed post in respect of the 1st petitioner along with other 11 staff members of the 5th respondent school as per proceedings dated 29.3.1993. Since the date of absorption to the Grant-in-Aid, the salaries of the petitioners have been regularly paid from Government Fund (Non-Plan) from 1.4.1992 onwards.

4. However, it was said that, surprisingly in the year 1997, on the basis of audit

report to the effect that petitioners' appointment was irregular and contrary to G.O.Ms.No.524, Education Department, dated 20.12.1988, respondent No.2 addressed a letter to the respondent No.3 to offer his remarks. Whereupon, respondent No.3 submitted his remarks on 13.11.1998 categorically stating that the petitioners were appointed in the year 1989, in accordance with the rules given in G.O.Ms.No.60 dated 28.1.1986. It was also pointed out that in W.P.No.15921 of 1989 batch, this Court by order dated 31.12.1996 directed regularization of all such irregular appointments, which have been contrary to G.O.Ms.No.524 (Education, Rules) dated 20.12.1988. Thereafter, the state Government constituted a state level committee for considering appointments and on receipt of the representation from the Committee, regularized the appointments of nearly 34 persons vide G.O.Ms.No.92, dated 3.12.1999, where the petitioners' names were also shown. However, the benefit was sought to be given only with effect from 1.4.1997. The respondent No.3 vide letter dated 28.12.1999 informed the District Educational Officer, Kakinada that the amounts already released to the petitioners up to 31.3.1997 have to be recovered and requested to release grant-in-aid from 1.4.1997 as per the instructions issued in G.O.Ms.No.92. Therefore, the petitioners have been approaching the respondents and since no action is forthcoming, the present writ petition is filed. The case of the petitioners is that under the impugned G.O., the respondent No.1 ought to have absorbed the petitioners into service from the date of their initial appointment. Hence the present writ petition.

5. In the counter affidavit filed on behalf of the respondents, it is stated that the petitioners' initial appointment was in violation of the rules the then existing and therefore, their appointment was illegal and in violation of G.O.Ms.No.524, dated 20.12.1988. Along with several other similarly placed employees, the impugned G.O has been rightly issued and therefore, the petitioners were not entitled to any such claim and instructions have been rightly issued for recovery therefrom. Thus, there are no merits in the writ petition and the same is liable to be dismissed.

6. Having considered the aforesaid submissions and also on perusal of the material available on record, the only point which arises for consideration is as to whether the petitioners are entitled to the relief of admission into grant-in-aid and other benefits from the date of their initial appointment?

7. There is no dispute about the fact that initially, respondent No.5 was a private institution, without any admission to grant-in-aid. The petitioners were appointed with effect from 28.6.1989 and 26.8.1989 respectively. According to the petitioners, their appointment is perfectly in order and also satisfies all the qualifications and conditions as contemplated under G.O.Ms.No.60,dated 28.1.1986, in respect of which, there is no serious dispute. However, it is to be seen that the institution, namely, the 5th respondent, was admitted to grant-in-aid along with 12 other schools as per G.O.Ms.No.299 dated 1.9.1992 and admittedly, the petitioners were being paid salaries from out of the Government fund alone from 1.4.1992 onwards. It is only when the impugned proceedings have been issued, extending the benefit with effect from 1.4.1997, the impugned action of recovery has been initiated against the petitioners. No doubt, along with several other similar persons, the petitioners case has also came up for consideration and they have been extended such benefit. However, no reason has been assigned for fixing the benefit from 1.4.1997. Admittedly, petitioners were appointed in the year 1989 and the benefit of extension of grant-in-aid was made on 1.9.1992 and the petitioners have been paid the salaries from 1.4.1992 onwards. Therefore, there is no reason as to why the petitioners should not be given the benefit from the date when the institution was admitted to grant-in-aid. Though the petitioners may not be able to claim such extension from the date of their initial appointment and any period prior to the admission of the institution to the grant-in-aid, which falls on 1st September, 1992 in this case, petitioners claim that at least they should be given the benefit of extension from the date on which their institution has been admitted to grant-in-aid. In a batch of cases, a Division Bench of this Court, as per the decision reported in **K.C.High School, Guntur vs. Govt. of A.P, Edn. Dept., Hyderabad** considering various submissions, held to the following effect:

> 31. Keeping all these considerations in view, we deem it just and proper to dispose of these writ petitions with the following directions:
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> 1. The Government will constitute a committee of officials either region-wise or state-wise which will go into the performance, service record and basic qualifications of the teachers who have been irregularly appointed by the private managements concerned contrary to G.O.Ms.No.524 (Education, Rules) dated 20-12-1988. The

Managements (Educational agencies) shall produce before the Committee the relevant record and information so as to enable the committee to judge the suitability of the candidates to be continued. Any information available with the managements with regard to the performance of the teachers so appointed will be placed before the Committee. The Committee shall interview the teachers if deemed necessary. It is however made clear that the Committee shall have due regard to the experience gained by the teachers during this interregnum.

2. The process of scrutiny by the Committee shall be completed within a period of four months from the date of receipt of this judgment.

3. The respondents concerned will extend the benefit of grant-in-aid for the posts held by these teachers, to the teachers found suitable for continuance, with effect from 1-4-1997 provided they have been appointed against clear vacancies and sanctioned posts.

4. As far as those teachers whose appointments were once approved by the competent officer of Education Department but later on the approval was withdrawn without notice on the ground that the procedure as per Rule 15 had not been followed, they shall be continued unless any subsequent disqualification comes in their way. They shall be paid salaries from out of the State funds from 1-1-1997 onwards.

W.P.No.14316 of 1992 wherein the appointment of P.Ruth Catherine in Salvation Army Elementary School, Vemuru is in issue falls within this category.

(5) The above directions will apply mutates mutandis to non-teaching staff, who were irregularly appointed during the relevant period.

(6) For the intervening period during which the teaching/non-teaching staff worked, and the Managements are liable to pay salaries and the scale of salary should be worked out as per mutual negotiations.

(7) The arrears of salaries as above should be paid or grant-in-aid be released within six months from the date of receipt of judgment.

8. From the aforesaid directions as specifically pointed out, in the above case, as per clause (3), it was stated that extension should be from 1.4.1997. However, as per clause (4), employees, whose appointments were approved, their case necessarily

has to be considered for payment of salaries from 1.1.1997 itself.

9. In the present case, petitioners appointments were also approved by the authorities on 1.6.1991 itself, though admission to grant-in-aid was made on 1.9.1992 vide G.O.Ms.NO.299, dated 1.9.1992 and the petitioners have been regularly paid the salaries from 1.4.1992 onwards. In the circumstances and also following the directions in the aforesaid decision, this case squarely falls in the latter clause, but not the earlier clause. Thus, it has to be held that the petitioners would be entitled to the benefit of extension not from 1.4.1997 as contemplated under the impugned G.O, but from the date to which the institution is admitted to grant-in-aid, i.e., from 1.9.1992.

10. The writ petition is accordingly allowed. The impugned G.O.Ms.NO.92, dated 3.12.1999 is set aside only to the extent of date of giving the extension and the same has been modified to the effect that the benefit will be given to the petitioners from 1.9.1992 and not from 1.4.1997 as directed. The writ petition is accordingly allowed. No order as to costs.

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B.PRAKASH RAO, J

Dated : 11.07.2005

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To

1) The Secretary, Government of A.P, Education Department,

Secretariat Buildings, Hyderabad.

2) Commissioner and Director of School Education, Andhra Pradesh,

Hyderabad.

3) Regional Joint Director of School Education, Kakinada, East Godavari

District.

4) District Educational Officer, East Godavari District, Kakinada.

5) Correspondent, S.V.S.M.Best Convent , English Medium High

School, Amalapuram, E.G.District.

6) 2 CCs to Smt.A.Anasuya

7) 2 CD copies.

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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WRIT PETITION NO.4124 OF 2000

DATED : 11.07.2005